Supreme Court, U.S.
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No. 99-

IN THE

Supreme Court of the United States

NANCY MELLON,

Petitioner,

v.

WILLIAM J. CASSIDY, JR.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Is a civil litigant entitled to standing to sue in Federal Court, in the public interest, when alleging wrongdoings by government officials and when seeking only injunctive and declaratory relief, not money damages?

Has the time come for this Court to re-examine taxpayer standing and to follow its own recommendation in *Frothingham v. Mellon*, 392 U.S. 83, 102 (1968) to: ". . . undertake a fresh examination of the limitations upon standing to sue in a Federal Court and the application of those limitations to taxpayer suits."

Does a U.S. Court of Appeals' failure to follow Federal Rules of Civil Procedure (particularily Rule 8 and 12(b)(6) with regard to pro se litigants) resulting in a decision, which is so far departed from the accepted and usual course of judicial proceedings and in conflict with numerous other Court of Appeals decisions on the same important matter (and its sanctioning of decisions by a lower court which are likewise far departed from the accepted and usual course of judicial proceedings), constitute a denial of the Constitutional rights of due process and meaningful access to Federal Court?

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Petitioner, Nancy Mellon, respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

Mellon makes this request based upon the facts presented below as well as upon this Court's recent acceptance of *VT Agency of Nat. Resources v. United States ex rel. Stevens*, Docket No. 98-1828 (1999), addressing issues of standing by private citizens on behalf of the public interest and actions which allow private citizens to initiate enforcement against wrongdoers who cause injury to the public at large.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is not published but can be found at *Nancy Mellon, Pro Se v. William J. Cassidy, Jr.*, Appeal No. 99-2053 (11th Cir. 1999) (App. A) and the unpublished opinion of the District Court can be found at *Nancy Mellon, Pro Se v. William J. Cassidy, Jr.*, No. 98-763-CIV-ORL-19B (Middle District, Orlando 1998). (App. B)

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit ("Court of Appeals") was entered on August 3, 1999. The Court of Appeals denied a timely petition for rehearing on November 17, 1999. (App. C)

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law . . ."

Federal Rules of Civil Procedure (Federal Rules), particularly Rules 8 and 12(b)(6), and the Administrative Procedures Act (APA), 5 U.S.C. §§ 701-706.

STATEMENT OF THE CASE

The fundamental questions in this case are whether a civil litigant who is a layperson and not a lawyer, and who brought an action alleging wrongdoing, in the public interest, seeking only declaratory and injunctive relief, not money damages, has standing to bring such suit and whether or not such litigant is entitled to relief from a judgment by a U.S. Court of Appeals if such judgment conflicts with the decisions of this Court as well as those in numerous other U.S. Courts of Appeals on the same important matter or if that judgment sanctions a decision by a lower court which is so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

This case arises in the context of the lower court's dismissal of Mellon's complaint based solely upon her standing as a taxpayer and her alleged failure to state a claim for breach of contract.

The central flaw in such analysis is that it fails to recognize: (1) The fundamental legal rights and protections the Federal Rules of Civil Procedure, particularly Rules 8

and 12(b)(6), grant Mellon, (2) state laws which grant Mellon standing to sue in the public interest, (3) Mellon's rights as alternative bidder and beneficiary of a contract.

The Eleventh Circuit Court of Appeals merely affirmed the lower court's ruling using these clearly erroneous standards and refused to consider any and all other issues saying that "they had been brought up (by Mellon) for the first time on appeal."

Such is simply not the case. As the record shows, Mellon has always sought to deny designation of Orlando Naval Training Center (ONTC) properties as surplus (and to enjoin the sale of these properties to the City of Orlando), before Federal requests (her appropriate and alternative use of the subject properties made in accordance with Federal laws), were met and to have Navy honor its contract to retain the Navy Exchange at ONTC for the benefit of Mellon and her group to use as promised. Mellon noted that Cassidy's violations of law in denying federal requests for ONTC properties would force these federal users to request $100 million (from a reportedly strapped defense budget) in order to build new facilities for their needs less than 10 minutes away from the requested new and useable ONTC facilities.

To fully appreciate the significance of the issues presented by this case, it is essential to consider its procedural background.

A. Background of the 1998 Judgment.

Upon ordered closure of the Orlando Naval Training Center, Mellon sought to enjoin the U.S. Navy from conveying title of any and all ONTC properties to the City

of Orlando until Federal requests for said properties were met in compliance with Federal laws governing same.

As a member of and coordinator for a group of military organizations (and others), Mellon requested appropriate and alternative use of ONTC properties in accordance with Federal laws and collected thousands of signatures in support of this request. (*See* record at Complaint, p. 5 and Appendix).

As required by Federal law, Mellon also sought to have Navy receive just compensation for the balance of ONTC properties, if sold. (*See* record, specifically Mellon's "Amended Opposition to Defendant's Emergency Motion to Discharge Lis Pendens", p. 5).

In making her request, Mellon argued that conveyance of ONTC properties to the City of Orlando without meeting Federal needs was in violation of, at a minimum, the Federal Property and Administrative Services Act of 1949, Title XXIX of the National Defense Authorization Act, and various portions of the Code of Federal Regulations. Mellon cited in support a case on point by the Comptroller General ruling that such properties could not be designated as surplus, or sold, with Federal requests pending and pointed out that all communities affected by base closings were likewise required to meet Federal requests and receive just compensation.

In addition, Mellon sought to have Navy honor its verbal and written promise (constituting a legally recognized contract), to retain the Navy Exchange at ONTC *for the benefit* of Mellon and her group. Mellon supported this request by arguing that, by its very nature, no one else could use the Navy Exchange, or be benefited thereby, thus establishing Mellon's third-party beneficiary rights.

Mellon, as a layperson, concedes that she may or may not have used proper, if any, legal terms or theory in her original complaint. She avers, however, that what she did say, argue, and allege was to the same effect and consequence as if she had, and that, regardless of any such shortcomings, the Federal Rules, particularly Rules 8 and 12(b)(6), protect litigants such as Mellon from having their complaints dismissed based upon non-substantive procedural failings.

Rule 12(b)(6) goes so far as to order that "The *possibility* (emphasis added) of a claim is enough to defeat dismissal" and the First Circuit in *Romero-Barcelo v. Hernandez-Agosto*, 75 F.3d 23 n.2 (1996) ruled that the court *must* investigate "whether the pleader could be entitled to *ANY RELIEF UNDER ANY LEGAL THEORY*" (emphasis added) before dismissing.

REASONS FOR GRANTING THE WRIT

I.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THIS COURT'S PRIOR RULINGS ON THE IMPORTANCE OF THE FEDERAL RULES OF CIVIL PROCEDURE, PARTICULARLY RULES 8 AND 12, AS A MEANS OF EFFECTUATING DUE PROCESS RIGHTS.

Mellon's petition for a writ of certiorari should be granted because the opinion below conflicts with this Court's important prior rulings on a litigant's, such as Mellon's, fundamental Constitutional rights of due process and meaningful access to court.

In delineating the contours of this right, this Court has recognized the Eleventh Circuit holding which identified the ". . . especial care which must be executed when an action is brought alleging denial of basic constitutional liberties by a plaintiff lacking formal legal training as opposed to one represented by counsel." *Moore v. State of Florida*, 703 F.2d 516, 520 (11th Cir. 1983).

Further, Federal Rule 8(e) allows that "no technical forms of pleadings or motions are required" and 8(f) "all pleadings shall be so construed as to do substantial justice"; and, "consistent with the (court's) obligation to construe complaints liberally, the pleader is not required to identify a specific legal theory under which recovery is sought." *Crull v. GEM Ins. Co.*, 58 F.3d 1376 (9th Cir. 1995).

This Court has found a denial of due process when dismissal of a complaint occurred without "the generous reading and review of such claims" as required by Federal Rules and, in so ruling, affirmed that the pleadings need identify *ONLY*: the basis of the court's jurisdiction; demand for judgment for the relief sought; a short and plain statement of the claim showing that the pleader is entitled to relief, and noting that: "Courts generally apply less stringent standards to pleadings drafted by laypersons . . ." *Maez v. Mountain States Tel. & Tel., Inc.*, 54 F.3d 1488, 1496 (1995); *Bowers v. Hardwick*, 478 U.S. 186 (1986).

This Court also found denial of due process when the lower courts failed to construe a complaint liberally or construe all INFERENCES (emphasis added) in plaintiff's favor noting, in *Forman v. Davis*, 371 U.S. 178, 83 S. Ct. 227 (1988), that:

> It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure

> for decisions on the merits to be avoided on the basis of such mere technicalities.

Likewise, this Court has found denial of due process where violations of Rule 12(b)(6) to ". . . construe the complaint liberally" and ". . . in evaluating subject matter jurisdiction, the court construes the complaint liberally . . . and views all reasonable inferences in plaintiff's favor" occurred, adding that, "Before dismissing for failure to state a claim, the court will examine the complaint to discern whether the pleader could be entitled to any type of relief under any possible legal theory.". *Sheuer v. Rhodes*, 416 U.S. 232 (1974); *Bowers v. Hardwick*, 478 U.S. 186 (1986).

In addition, the Administrative Procedure Act provides specifically not only for review of "[a]gency action made reviewable by statute" but also for review of "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. In support, this Court has held that: the APA's " 'generous review provisions' must be given a 'hospitable interpretation'." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 140-41, 87 S. Ct. 1507 (1967).

As the record shows, in all motions before the lower court, and on appeal, Mellon requested that her status and protected legal rights as a layperson be acknowledged.

II.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH OTHER CIRCUIT'S PRIOR RULINGS ON THE IMPORTANCE OF THE FEDERAL RULES OF CIVIL PROCEDURE, PARTICULARLY RULES 8 AND 12, AS A MEANS OF EFFECTUATING DUE PROCESS.

Mellon's petition for a writ of certiorari should be granted because the opinion below conflicts with the Eleventh Circuit's own prior rulings and with other circuits' important prior rulings on the issues presented in this case.

With respect to due process the Eleventh Circuit and other circuits have held that due process and meaningful access to federal court are violated when a decision is rendered with a failure to consider whether litigants (such as Mellon), were entitled to any relief under any possible legal theory or with a failure to ". . . consider alternative contention" or "incorrectly applied equal protection analysis and utilized the wrong legal standard as a basis for dismissal." *Crull v. GEM Ins. Co.*, 58 F.3d 1376 (9th Cir. 1995); *Bangerter v. OREM City Corp.*, 46 F.3d 1491 (10th Cir. 1995); *Barfield v. Brierton*, 883 F.3d 923 (11th Cir. 1989).

Likewise, other circuits have ruled that ". . . a dismissal for failing to state a claim is disfavored and not granted routinely in view of the Rules' 'notice pleading' requirements." *Rothner v. City of Chicago*, 929 F.2d 297 (7th Cir. 1991), and:

In *Bangerter v. OREM City Corp.*, 46 F.3d 1491 (10th Cir. 1995), the Tenth Circuit found that the lower court

"incorrectly applied equal protection analysis and utilized the wrong legal standard as a basis for dismissal", constituting a denial of meaningful access to federal court, and:

In *Stareu v. American National Bank & Trust Co. of Chicago*, 320 F.2d 1257, 1263 (7th Cir. 1976), the Seventh Circuit found that: "It is well settled that the Federal Rules of Civil Procedure are to be liberally construed to effectuate the general purpose of seeing that cases are tried on the merits and to dispense with technical procedural problems."

Likewise, in *Crull v. GEM Ins. Co.*, 58 F.3d 1376 (9th Cir. 1995), the Ninth Circuit found that the lower court "failed to consider alternative contention" constituting a denial of meaningful access to federal court, and:

In *Elec. Const. & Maintenance Co., Inc. v. Maeda Pacific Corp.*, 764 F.2d 619, 623 (11th Cir. 1985), the Eleventh Circuit found that: "The pleadings need not identify any particular legal theory under which recovery is sought."

Finally, Rule 12 is especially cognizant of pro se litigant rights, noting that:

> Courts are particularly cautious while inspecting pleadings prepared by plaintiffs who lack counsel and are proceeding pro se. Often inartful, and rarely composed to the standards expected of practicing attorneys, pro se pleadings are viewed with considerable liberality and are held to less stringent standards than those expected of pleadings drafted by lawyers.

III.

BECAUSE THE OPINION BELOW DISREGARDS STATE AND FEDERAL LAWS WHICH ALLOW A PRIVATE CITIZEN TO ACT AS A PRIVATE ATTORNEY GENERAL, IN THE PUBLIC INTEREST, THEREBY GRANTING STANDING TO SUE IN FEDERAL COURT.

Mellon's petition for a writ of certiorari should be granted because the opinion below fails to recognize state laws which allow private citizens to act as private attorney generals in the public interest and ignores the requirement that federal courts look to state laws for guidance in such rulings. Further, nothing in FPAS or Title XXIX expressly preempts such state rights of action.

The opinion below also fails to acknowledge the right to standing recognized by this Court, and all other courts of appeal, that litigants such as Mellon have standing to sue in cases where they seek only declaratory and injunctive relief, not money damages.

Finally, the opinion below fails to recognize that Mellon's injuries are injuries as a matter of law and as such she is entitled to standing to sue for a remedy.

CONCLUSION

This case presents questions of exceptional public importance because it seeks to determine the legal rights of taxpayers and pro se litigants who bring suits, in the public interest, seeking only injunctive and declaratory relief, not money damages, and the limitations upon standing to sue in

a Federal Court and the application of those limitations to taxpayer suits.

It also seeks to have this Court use its supervisory power to determine if a decision by a U.S. Court of Appeals (affecting the rights of litigants who are laypersons, not represented by counsel), which is contrary to the Federal Rules of Civil Procedure and which has so far departed from the accepted and usual course of judicial proceedings (or its sanctioning of similar decisions by a lower court), constitutes a denial of due process of law and meaningful access to Federal Court.

If the opinion is allowed to stand, it would have the chilling effect of denying to all laypersons the fundamental Constitutional guarantees and basic civil rights of due process and meaningful access to court, in violation of 28 U.S.C.A. and the United States Constitution, and forever bar them from bringing suit in the public interest; the debate on taxpayer standing to bring suit in the public interest will remain unresolved, and the most basic and fundamental rights of elementary justice will forever suffer.

Likewise, if the opinion below is allowed to stand, the Federal Rules of Civil Procedure, and the large body and longstanding holdings of this Court (and all courts) with regard to the Federal Rules of Civil Procedure — the very underpinings of our judicial system — will forever be diminished.

On the other hand, by granting Mellon's petition for certiorari, this Court can correct the Eleventh Circuit's decision and, in so doing, reaffirm the public's confidence in the judicial process, establish the rights of taxpayers to

bring suit (in the public interest) to remedy wrongdoings by government officials when seeking only declaratory and injunctive relief, not money damages, and remedy institutional injustice with regard to pro se litigants.

Accordingly, to prevent an enormous injustice, Nancy Mellon respectfully requests that her petition for a writ of certiorari be granted.

Respectfully submitted,

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